

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



**CORRECTED
FISCAL NOTE**

HB 583 - SB 825

March 2, 2017

CORRECTED SUMMARY OF BILL: Enhances the manufacture, delivery, sale, or possession of fentanyl to a class B felony for amounts under 200 grams. Decreases each felony marijuana offense under Tenn. Code Ann. § 39-17-417(g) by one classification.

ESTIMATED FISCAL IMPACT:

On March 2, 2017, a fiscal note was issued for this bill with the following estimated impact:

Increase State Expenditures – \$1,058,400/Incarceration.*

The analysis failed to include the change to felony marijuana offenses. As a result, the fiscal note is being corrected to reflect this omission. The corrected fiscal impact for the bill is estimated as follows:

(CORRECTED)

Decrease State Expenditures – Net Impact – \$6,858,800/Incarceration*

Increase Local Expenditures – \$48,600**

Corrected Assumptions:

- Under current law, fentanyl is a Schedule II controlled substance. Manufacturing, delivering, selling, or possessing with intent fentanyl is a class C felony in any amount up to 200 grams, a class B felony in any amount 200 grams to 2,000 grams, and a class A felony in any amount 2,000 grams or more.
- The proposed legislation would punish manufacturing, delivering, selling, or possessing with intent fentanyl in any amount a class B felony. However, this would apply to amounts up to 2,000 grams as it is assumed a district attorney would prosecute someone for a class A felony in any amount over 2,000.
- Because manufacturing, delivering, selling, or possessing with intent fentanyl in any amount between 200 and 2,000 grams is already a class B felony, the proposed legislation will enhance current offenses under 200 grams from a class C felony to a class B felony.

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- Fentanyl is a synthetic opiate analgesic that is more potent than morphine. The Tennessee Bureau of Investigation reports that clandestine labs are producing fentanyl and mixing it with heroin. Their agents have already seen it in a number of cases.
- Statistics from the Department of Correction (DOC) show an average of 540 admissions each year for manufacturing, delivering, selling, or possessing with intent a schedule II drug. It is assumed that five percent (27 admissions) of these admissions are attributable to fentanyl.
- The proposed legislation will result in 27 admissions being enhanced from a class C felony to a class B felony.
- The average time served for a class C felony is 3.51 years; the average time served for a class B felony is 6.32 years. The proposed legislation will result in each offender serving an additional 2.81 years ($6.32 - 3.51$).
- According to the DOC, the average operating cost per offender per day for calendar year 2017 is \$68.75.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for three ($27 \times .1178$) additional admissions for a total of 30 ($27 + 3$).
- According to the DOC, 48.6 percent of offenders will re-offend within three years of their release. A recidivism discount of 48.6 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($386 \text{ offenders} \times .486 = 15 \text{ offenders}$).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 15 offenders ($30 \text{ offenders} - 15 \text{ recidivism discount}$) serving an additional 2.81 years (1,026.35 days) at a cost of \$70,562 ($\$68.75 \times 1,026.35 \text{ days}$) per offender. The cost for 15 offenders is \$1,058,430 ($\$70,562 \times 15$).
- Tennessee Code Annotated § 39-17-417(g) punishes violations relative to marijuana in amounts of one-half ounce to 10 pounds as a class E felony. The proposed legislation reduces the classification to a class A misdemeanor.
- Statistics from the DOC show an average of 267 admissions each year for class E felony offenses under Tenn. Code Ann. § 39-17-417(g).
- The average time served for these offenses is 1.17 years (427.34 days).
- The proposed legislation will decrease state incarceration costs by \$7,844,360 ($267 \text{ admissions} \times 427.34 \text{ days} \times \68.75).
- Tennessee Code Annotated § 39-17-417(g) punishes violations relative to marijuana in amounts of 10 pounds to 70 pounds as a class D felony. The proposed legislation reduces the classification to a class E felony.
- The DOC shows no admissions for class D marijuana possession. It is assumed that decreasing the felony classification will not significantly decrease state incarceration costs.
- Tennessee Code Annotated § 39-17-417(g) punishes violations relative to marijuana resin in amounts of four pounds to eight pounds or 20 or more marijuana plants as a class C felony. The proposed legislation reduces the classification to a class D felony.


- Statistics from the DOC show an average of 9.3 admissions each year for class C felony admissions under Tenn. Code Ann. § 39-17-417(g).
- The average time served for these offenses is 2.52 years. The average time served for a class D felony is 2.23 years. The proposed legislation will result in each offender serving 0.29 fewer years ($2.52 - 2.23$), or 105.92 fewer days, than under current law.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for one ($9.3 \times .1178$) additional admissions for a total of 10 ($9 + 1$).
- The proposed legislation will decrease state incarceration costs by \$72,820 ($10 \text{ admissions} \times 105.92 \text{ days} \times \68.75)
- The net recurring decrease to state incarceration costs is estimated to be \$6,858,750 ($\$7,844,360 + \$72,820 - \$1,058,430$).
- The proposed legislation does not create any new felony cases, but rather impacts the sentencing of these offenses. It is assumed that the courts, public defenders, and district attorneys can accommodate the impact to their operations within their existing resources.
- The proposed legislation will increase local incarceration costs by making class E felony violations under Tenn. Code Ann. § 39-17-417(g) class A misdemeanor offenses.
- It is assumed that most of the offenders will not serve time in a local jail for these offenses, but some will serve time.
- It is assumed that 10 percent ($267 \times 0.1 = 27$) will serve time for these violations.
- The estimated 2017 cost per inmate per day for local jails is \$60.00.
- It is assumed that the average time served by these offenders is 30 days.
- The proposed legislation will increase local incarceration costs by \$48,600 ($27 \text{ offenders} \times 30 \text{ days} \times \60).

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

***Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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